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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/420,524	10/18/1999	MASAKAZU KANECHIKA	0068-0399-0	2921

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OBLON, SPIVAK, MCCLELLAND, MAIER & NUESTADT  
1755 JEFFERSON DAVIS HIGHWAY  
FOURTH FLOOR  
ARLINGTON, VA 22202

EXAMINER

GARCIA, JOANNIE A

ART UNIT

PAPER NUMBER

2823

DATE MAILED: 02/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/420,524	KANECHIKA ET AL.
	Examiner	Art Unit
	Joannie A Garcia	2823

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 18 November 2002.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 1-9, 12-32 and 41-48 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 10, 11 and 33-40 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

Newly submitted claims 46-48 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Newly submitted claims 46-48 are directed to the invention of originally filed claims 1-9, 30, and 31, which have been previously withdrawn from consideration in the Office Action mailed 10-01-01.

Newly submitted claims 41-45 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Newly submitted claims 41-45 are directed to the invention of originally filed claims 12-29, and 32, which have been previously withdrawn from consideration in the Office Action mailed 01-15-02.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 5, and 13-15, are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter in which the applicant regards as his invention.

Claims 10, 11, and 33-40, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 10, 11, 33, 35, 37, and 38, line 4, it is unclear which range is recited for the radius of curvature of the conic body.

Claim 38 recites the limitation "memory unit" in lines 12-13. There is insufficient antecedent basis for this limitation in the claim.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 39, are rejected under 35 U.S.C. 103(a) as being unpatentable over Itoh et al (U.S. Patent 5,614,663), in combination with the following comments.

Itoh et al teaches a conic body 13 formed on semiconducting material substrate 103 (Figures 4(e), Column 5, lines 13-17, and 49-57), wherein said conic body has a radius curvature of 10 nm (Column 8, lines 25-26) in the vicinity of its leading end. Itoh et al teaches a process yielding a tip, which has a high aspect ratio (Abstract). It would have been a matter of routine optimization within the teachings of Itoh et al to determine a suitable aspect ratio to achieve the conic body formation step.

Claims 11, 33, 35, 37, and 38, would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 34, 36, 40, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-0956. **See MPEP 203.08.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner J. Garcia whose telephone number is (703) 306-5733. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Olik Chaudhuri can be reached on (703) 306-2794. The fax number for this group is (703) 308-7722 (and 7724), and (703) 305-3431 (and 3432). MPEP 502.01 contains instructions regarding procedures used in submitting responses by facsimile transmission.

JAG  
2/9/03

  
George Fourson  
Primary Examiner  
2823